

#### **§ 103.4**

the advantage of the applicant in the operation of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending program.

#### **§ 103.4 Management and technical assistance.**

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the spe-

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cific areas of need, and whether it will provide such assistance.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

#### **§ 103.5 Preservation of historical and archeological data.**

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

#### **§ 103.6 Environmental and flood disaster protection.**

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

#### **§ 103.7 Eligible organizations.**

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for

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services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy shall be discontinued. Cooperative associations, corporations and partnerships shall be organized pursuant to state, federal or tribal law. Cooperative associations, corporations, and partnerships applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions, or ordinances enacted by the governing body of the tribe, if applicable.

[40 FR 12492, Mar. 19, 1975; 40 FR 20952, May 15, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

### § 103.8 Eligible individuals.

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

[54 FR 34975, Aug. 23, 1989]

### § 103.9 Eligible lenders.

(a) Those financial institutions subject to examination and supervision by an agency of the United States, a state, or the District of Columbia, having the capacity to evaluate, process, disburse, and service loans, and Indian tribes making loans from their own funds to other tribes or organizations of Indians, are eligible to have loans insured under this part 103. Loans made by any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and which lender is satisfactory to the Commissioner, may be guaranteed. Any national bank or federal savings and loan association, or any bank,

trust company, building and loan association, or insurance company authorized to do business in the District of Columbia may make any loan of which at least 20 percent is guaranteed under this part 103 without regard to the limitations and restrictions of any other federal statute with respect to:

- (1) Ratio of amount of loan to the value of the property;
- (2) Maturity of loans,
- (3) Requirement of mortgage or other security,
- (4) Priority of lien, or
- (5) Percentage of assets which may be invested in real estate loans.

(b) Any guaranty certificate issued pursuant to this part 103 or any loan insured pursuant to an agreement with a lender approved in accordance with this part 103 shall be conclusive evidence that the loan was eligible for guaranty or insurance.

### § 103.10 Ineligible loans.

The following loans are not eligible for guaranty or insurance under this part 103:

- (a) Loans made by any agency or instrumentality of the federal government.
- (b) Loans made by an organization of Indians making loans from funds borrowed from the United States.
- (c) Loans where the interest income is not included as taxable income under chapter 1 of the Internal Revenue Code of 1954 as amended.
- (d) Loans with repayment terms exceeding thirty years.
- (e) Loans which are linked to Federally tax-exempt bond obligations.
- (f) Loans to a borrower whose equity, as defined in § 103.1, in the business being financed is less than 20 percent.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

### § 103.11 Guaranteed loans.

Loans, except those excluded in § 103.10, made by any lender meeting the requirements of § 103.9(a), which are satisfactory to the Commissioner may be guaranteed. Applications for guaranty will be considered on a loan by